IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5252 of 2000

With

SPECIAL CIVIL APPLICATION No. 5253 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARADIA STEEL ROLLING MILLS - Petitioner(s)

Versus

SHANTABEN PURSHOTTAM, LEGAL HEIR OF PURSHOTTAM GOVINDBHAI & 3 - Respondent(s)

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Appearance :

MR MK VAKHARIA for Petitioner No(s).: 1.

MR JAGDISH H MEHTA for Respondent No(s).: 1.
MR YATIN SONI for Respondent No(s).: 2.
MR KL PANDYA AGP for Respondent No(s).: 3.
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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 29/06/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the order dated 24.12.1999 passed by the Labour Court, Jamnagar in Recovery Applications No.192 of 1998 and 338 of 1998, whereby the said applications were allowed and recovery Notices were issued to the petitioner.

2.0 The petitioner herein is a proprietorship concern dealing in the business of manufacture of steel products. It is the case of the petitioner that somewhere in the year 1988, respondent no.1 had filed Reference Application No.558 of 1988 before the Labour Court, Jamnagar against one Shri Baradia Ship Breaking for recovery of back wages. However, respondent no.1 has shown the address of the petitioner as the care of address of the said Shri Baradia Ship Breaking.

2.1 Similarly, another reference being Reference No.559 of 1998 was filed by respondent no.2 for recovery of back wages against the said Shri Baradia Ship Breaking and the address of the petitioner Company was shown as care of address of the said Company.

2.2 It is the case of the petitioner that upon service of Notices, the petitioner appeared before the Labour Court and submitted letter dated 20.02.1992 wherein the petitioner had stated that the petitioner is in no way concerned with the said Shri Baradia Ship Breaking and that the husbands of respondents no.1 & 2 were not working with the petitioner Company.

2.3 The Labour Court passed award dated 29.08.1997 against the said Shir Baradia Ship Breaking. Thereafter, respondents no.1 & 2 jointly filed Recovery Application No.192 of 1998 before the Labour Court, Jamnagar and also filed separate applications being Recovery Applications No.286 of 1998 and 338 of 1998 before the said Court. The said Recovery Applications were filed against the petitioner herein. Ultimately, the Labour Court by impugned award dated 24.12.1999 ordered the recovery of the amount of reference from the petitioner.

2.4 Pursuant to the above, the petitioner received recovery Notice dated 18.03.2000 from the respondent authority. On 17.05.2000, the petitioner received another Notice stating that the respondent authority shall make the recovery of the amount of award from the petitioner Company, if the petitioner Company fails to make the payment of the amount of award. Feeling aggrieved by the said orders, the petitioner Company has preferred these petitions before this Court.

3.0 Mr. M.K. Vakharia learned advocate for the petitioner has contended the Notices at Annexures – 'A' & 'B' to the petition have been issued under mis-conception of law inasmuch as the petitioner Company was never a party before the Labour Court in the said proceedings. He has submitted that from the impugned award of the Labour Court, it can be clearly seen that one “Shri Baradia Ship Breaking” is the Employer of the husbands of the respondents and not the petitioner herein.

3.1 He has further submitted that the petitioner Company

is not at all connected with the said Shri Baradia Ship Breaking, and therefore, the Labour Court has committed an error in entertaining the Recovery Applications against the petitioner Company. Mr. Vakharia has submitted that the Labour Court has erred in passing the impugned order against the petitioner Company, and hence, it is required to be quashed and set aside.

4.0 Mr. J H Mehta learned advocate for respondents no. 1 & 2 has submitted that in para 5 of the impugned award, the said facts have been considered. He has submitted that the Labour Court has rightly passed the impugned award against the petitioner Company.

5.0 I have heard learned counsel for the parties and perused the documents placed on record. In the references preferred by respondents no.1 & 2, they themselves have stated that one Shri Baradia Ship Breaking was the Employer of their husbands. Hence, it clearly transpires that there does not exist any Employer – Employee relationship between the petitioner Company and the husbands of respondents no.! & 2 herein.

5.1 In the present case, the petitioner is a Company engaged in the business of manufacture of re-rollers of M.S. Rounds, Flats, Steel Bars etc.. It is required to be noted that the petitioner herein is in no way engaged in ship breaking business, and therefore, the petitioner Company cannot be said to be connected with the said Shri Baradia Ship Breaking.

5.2 In above view of the matter, I am of the opinion that the Labour Court has committed serious error in passing the

impugned order against the petitioner Company and the respondent authority ought not to have issued the said Notices to the petitioner. Hence, the impugned order of the Labour Court is illegal and erroneous and deserves to be quashed and set aside.

6.0 For the foregoing reasons, these petitions are allowed. The impugned order dated 24.12.1999 passed by the Labour Court, Jamnagar, in Recovery Applications No.192 of 1998 and 338 of 1998, qua the petitioner Company, and the consequential Notices issued by the respondent authority at Annexures- 'A' & 'B' to the petitions, are ordered to be quashed and set aside. The matter is remanded to the Labour Court, Jamnagar, for adjudication afresh, considering Shri Baradia Ship Breaking as a party to the proceedings in place of the petitioner Company. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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